

**6.4. Absence of Conflicting Agreements or Required Consents.** Except as set forth in Article 4 with respect to FCC and other governmental consents, the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby by ShootingStar (a) do not and will not require the consent, approval, authorization or other action by, or filing with or notification to, any third party or governmental authority; (b) do not and will not violate any provisions of ShootingStar's articles of incorporation or bylaws; (c) do not and will not violate any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority to which ShootingStar is a party or by which it is bound; and (d) do not and will not, either alone or with the giving of notice or the passage of time, or both, conflict with, constitute grounds for termination of or result in a breach of the terms, conditions or provisions of, or constitute a default under any contract, agreement, instrument, license or permit to which ShootingStar is now subject. On or before the Closing, ShootingStar has obtained any required consent of its lenders to the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

**6.5. Claims and Legal Actions.** There is no claim, legal action, counterclaim, nor any order, decree or judgment, in progress or pending, or to the knowledge of ShootingStar, threatened, against or affecting ShootingStar that could reasonably be expected to adversely affect ShootingStar's performance under this Agreement or the other agreements contemplated hereby to which ShootingStar is a party or consummation of the transactions contemplated hereby or thereby.

**6.6. Bankruptcy.** No insolvency proceedings of any character, including bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting ShootingStar or any of its subsidiaries or parent entities are pending or threatened, and neither ShootingStar nor any of its subsidiaries or parent entities has made any assignment for the benefit of creditors or taken any action in contemplation of or that would constitute the basis for the institution of such insolvency proceedings.

**6.7. Financial Qualifications.** Subject to Section 11.5 hereof, ShootingStar is financially qualified to consummate the transactions contemplated by this Agreement and to certify to its financial qualifications on FCC Form 314, and ShootingStar shall so certify.

## **ARTICLE 7**

### **JOINT COVENANTS**

**7.1. Lease Agreement.** The parties will enter into a tower lease agreement substantially in the form of Exhibit D hereto for the rental by ShootingStar of space on QED's broadcast tower and in QED's transmitter building (the "Tower Lease").

**7.2. Conditions.** If any event should occur between the date hereof and the Closing, either within or without the control of any party hereto, that would prevent fulfillment of the conditions upon the obligations of any party to consummate the transactions contemplated by this Agreement, the parties shall use their reasonable efforts to cure the event as expeditiously as possible.

**7.3. Reasonable Efforts.** Each party shall use reasonable efforts to cause the fulfillment at the earliest practicable date of all the conditions to the obligations of the other party to consummate the purchase and sale contemplated by this Agreement.

**7.4. No Inconsistent Action.** Neither party shall take any action materially inconsistent with its obligations under this Agreement, or materially inconsistent with the terms and conditions of this Agreement, including any such action that would hinder, delay or interfere with the consummation of the transactions contemplated by this Agreement.

**7.5. Confidentiality; Publicity.** Except to the extent necessary to facilitate accomplishment of the objectives set forth in this Agreement, each party shall keep confidential all information obtained by it with respect to the other in connection with this Agreement, and if the transactions contemplated hereby are not consummated for any reason, each shall return to the other, without retaining a copy thereof, any schedules, documents or other written information, including all financial information, obtained from the other in connection with this Agreement and the transactions contemplated hereby, except if such information is known or available through other lawful, publicly available sources or if such party is advised by counsel that its disclosure is required in accordance with applicable law, in which case the party required to make such disclosure shall use reasonable efforts to notify the other party prior to making such disclosure. Except with the prior written consent of the other party, which consent shall not be unreasonably withheld, neither party shall discuss this Agreement or the transactions contemplated hereby with any member of the press, or issue any press release or make any public statement (oral or written) regarding the transactions contemplated by this Agreement.

**7.6. Cooperation Regarding Dereservation.** ShootingStar will not take any action that hinders, delays, interferes with or is otherwise inconsistent with the sale of the WQEX Assets by QED to ShootingStar. QED shall provide ShootingStar with a copy of QED's Dereservation Petition prior to filing such petition and any other proposed filings with the FCC regarding the Dereservation Petition prior to making such filing. ShootingStar shall have the right to comment on any statements contained in the Dereservation Petition or any such filings that refer to ShootingStar or this Agreement, or the transactions contemplated hereby. Except with the consent of QED or as otherwise required by law, neither ShootingStar nor its agents shall conduct any discussions, or make any filings with the FCC regarding the Dereservation Petition unless ShootingStar believes in good faith that the petition or any filings or statements of QED related thereto inaccurately describe this Agreement or ShootingStar or the transactions contemplated hereby, or QED fails to fulfill its obligation to provide ShootingStar with copies of

its filings with the FCC. Upon request by QED, ShootingStar shall cooperate with and assist QED in diligently prosecuting the Dereservation Petition before the FCC.

**7.7. Challenges to Transaction.** Each party shall notify the other of any material litigation, arbitration or administrative proceeding pending or, to its knowledge, threatened that challenges the transactions contemplated by this Agreement or adversely affects WQEX, including any challenges to the FCC Dereservation Petition or FCC Assignment Application contemplated hereby, and the parties shall cooperate to take such reasonable steps as may be necessary to remove any such impediment to the transactions contemplated by this Agreement.

**7.8. Space and Equipment Rental.** ShootingStar may elect, in its discretion, to lease office and studio space and equipment from QED on the terms set forth on Schedule 7.8 hereto (the "Space and Equipment Lease").

## **ARTICLE 8**

### **ADDITIONAL COVENANTS OF QED**

**8.1. Dereservation Notification.** QED shall promptly and regularly notify ShootingStar of the progress of its efforts to effect the deletion of the Channel 16 and Channel 26 reservations.

**8.2. No Solicitation.** Neither QED nor any principal or affiliate of QED shall, directly or indirectly: (a) solicit, initiate or encourage submission of any proposal or offer from any person relating to any acquisition or purchase of all or any substantial amount of the WQEX Assets, or any equity interest in WQEX, or (b) participate in any discussions or negotiations regarding, or furnish to any person any information with respect to, or otherwise cooperate in any way with, or assist or participate in, facilitate or encourage, any effort or attempt by any person to do or seek any of the foregoing.

**8.3. Additional Notifications.** Between the date of this Agreement and the Closing Date, QED shall notify ShootingStar if the regular broadcast transmissions at full authorized effective radiated power of WQEX from its main broadcasting antenna are interrupted or impaired for a period of more than three (3) consecutive hours or for an aggregate of six (6) hours in any continuous two (2) day period or twelve (12) hours in any single thirty (30) day period.

**8.4. Interim Operation.** Between the date of this Agreement and the Closing Date, except as expressly permitted by this Agreement or with the prior written consent of ShootingStar:

(a) ShootingStar shall not, directly or indirectly, control, supervise or direct the operations of WQEX. Such operations shall be the sole responsibility of QED and, subject to the additional provisions of this Section 8.4, shall be in its complete discretion;

(b) QED shall operate WQEX solely in the ordinary and normal course consistent with past practice (including by simulcasting the programming of Station WQED(TV)), with the intent of preserving the ongoing operations and the WQEX Assets;

(c) QED shall not sell, assign, lease or otherwise transfer or dispose of any of the WQEX Assets, except for assets consumed or disposed of in the ordinary course of business, where no longer used or useful in the business or operation of WQEX, in which event the same shall be replaced with assets of equal or greater value and utility, but the Klystron referenced in Section 1.2(c) shall not be removed, repaired or replaced;

(d) QED shall not create, assume or permit to exist any claim, liability, mortgage, lien, pledge, condition, charge or encumbrance of any nature whatsoever upon the WQEX Assets, except for those in existence on the date of this Agreement, all of which will be removed on or prior to the Closing Date;

(e) QED shall operate WQEX in material compliance with the Communications Laws and the WQEX Station Licenses and with all other applicable laws, regulations, rules and orders, and shall not cause or permit by any act, or failure to act, any of the WQEX Station Licenses to expire, be surrendered, not renewed, adversely modified, or otherwise terminated, or fail to prosecute with due diligence any pending application to the FCC;

(f) QED shall not waive any material right relating to the WQEX Assets;

(g) QED shall make such repairs or replacements to the WQEX Assets as are reasonably required to continue the analog operations of WQEX consistent with WQEX's current analog operations, but QED shall not be obligated to undertake technological improvements of the WQEX Assets or to convert or replace such WQEX Assets to permit digital or other advanced television transmissions unless required by the terms and conditions of any construction permit issued by the FCC for digital operations; and

- (h) QED shall maintain standard insurance policies on the WQEX Assets.

**8.5. Access to Station.** Between the date of this Agreement and the Closing Date, QED shall give ShootingStar and its counsel, accountants, engineers and other representatives, reasonable access during normal business hours to the WQEX Assets and the Station, and shall furnish ShootingStar with all information related to the WQEX Assets that ShootingStar reasonably requests. ShootingStar's rights under this Section shall not be exercised in such a manner as to disrupt or interfere unreasonably with the operation of WQEX.

**8.6. Payment of Indebtedness; Financing Statements.** QED shall secure the release of all liens or encumbrances on the WQEX Assets and shall deliver to ShootingStar at the Closing documentary evidence of the same, including (but not limited to) releases or terminations under the Uniform Commercial Code and any other applicable federal, state or local statutes or regulations of any financing or similar statements filed against any WQEX Assets.

## **ARTICLE 9**

### **ADDITIONAL COVENANTS OF SHOOTINGSTAR**

**9.1. No Pre-Closing Control of WQEX.** ShootingStar shall not, directly or indirectly, control, supervise or direct the operations of any station licensed to QED. Such operations shall be the sole responsibility of QED and, subject to the provisions of Section 8.4 hereof, shall be in QED's complete discretion.

**9.2. Transfer Taxes.** ShootingStar agrees to pay any transfer, sales, use or other similar taxes imposed by the federal government or any state or political subdivision thereof as a result of the transfer of the WQEX Assets by QED to ShootingStar hereunder.

**9.3. Call Letters.** Following the Closing, ShootingStar shall not use the call letters "WQEX" for Channel 16.

## **ARTICLE 10**

### **CONDITIONS PRECEDENT TO QED'S OBLIGATION TO CLOSE**

The obligations of QED hereunder are, at its option, subject to satisfaction, at or prior to the Closing Date, of each of the following conditions:

#### **10.1. Representations, Warranties and Covenants.**

(a) All representations and warranties of ShootingStar made in this Agreement shall be true and complete in all material respects on and as of the Closing Date as if made on and as of that date.

(b) All of the terms, covenants and conditions to be complied with and performed by ShootingStar on or prior to the Closing Date shall have been complied with or performed.

**10.2. Governmental Consents.** The consents applicable to QED specified in Article 4 hereof shall have been obtained.

**10.3. Adverse Proceedings.** No suit, action, claim or governmental proceeding shall be pending against, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered against any party hereto that QED in good faith believes would render it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms.

**10.4. Deliveries.** ShootingStar shall have made or stand willing to make all the deliveries required under Section 12.1.

## ARTICLE 11

### CONDITIONS PRECEDENT TO SHOOTINGSTAR'S OBLIGATION TO CLOSE

The obligations of ShootingStar hereunder are, at its option, subject to satisfaction, at or prior to the Closing Date, of each of the following conditions:

#### 11.1. Representations, Warranties and Covenants.

(a) All representations and warranties of QED made in this Agreement shall be true and complete in all material respects on and as of the Closing Date as if made on and as of that date.

(b) All of the terms, covenants and conditions to be complied with and performed by QED under this Agreement on or prior to the Closing Date shall have been complied with or performed in all material respects.

**11.2. Governmental Consents.** The consents applicable to ShootingStar specified in Article 4 of this Agreement shall have been obtained, the FCC shall have deleted the noncommercial reservations for analog Channel 16 and digital Channel 26 without material restrictions, and either (a) the FCC's Mass Media Bureau shall have granted the FCC Assignment Application and such grant shall have become a Final Order, or (b) the full FCC shall have granted the FCC Assignment Application, by action that is not a Final Order. A "Final Order" is any action (i) that has not been vacated, reversed, stayed, set aside, annulled or suspended, (ii) with respect to which no timely appeal, request for stay or petition for rehearing, reconsideration or review by any party or by the FCC, on its own motion, is pending and (iii) as to which the time for filing any such appeal, request, petition or similar document or for the reconsideration or review by the FCC on its own motion under the Communications Laws has expired.

**11.3. Adverse Proceedings.** No suit, action, claim or governmental proceeding shall be pending against, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered against, any party hereto that ShootingStar in good faith believes would render it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms.

**11.4. Condition of WQEX Assets.** The WQEX Assets shall be in substantially the same condition on the Closing Date as the date of this Agreement, ordinary wear and tear excepted.

**11.5. Financing.** ShootingStar shall have obtained financing commitments, in amounts and on terms satisfactory to ShootingStar in its sole discretion, which commitments enable ShootingStar to consummate the transactions contemplated by this Agreement; provided, however, that the condition in this Section shall lapse unless invoked by ShootingStar by written notice to QED within thirty (30) days of the execution of this Agreement, and if so invoked, such notice shall be deemed to terminate this Agreement and the transactions contemplated herein.

**11.6. Programming.** ShootingStar shall have obtained programming for WQEX satisfactory to ShootingStar in its sole discretion; provided, however, that the condition in this Section shall lapse unless invoked by ShootingStar by written notice to QED within thirty (30) days of the execution of this Agreement, and if so invoked, such notice shall be deemed to terminate this Agreement and the transactions contemplated herein.

**11.7. Deliveries.** QED shall have made or stand willing to make all the deliveries required under Section 12.2, and shall stand ready to enter into the Space and Equipment Lease contemplated by Section 7.8 hereof.

## **ARTICLE 12**

### **DOCUMENTS TO BE DELIVERED AT THE CLOSING**

**12.1. Documents to be Delivered by ShootingStar.** At the Closing, ShootingStar shall deliver to QED the following:

- (a) the cash portion of the Purchase Price in immediately available wire transferred funds as provided in Section 2.1;
- (b) a certificate of an officer of ShootingStar, dated the Closing Date, in form and substance reasonably satisfactory to QED, certifying to the fulfillment of the conditions set forth in Article 10 hereof;
- (c) opinions of ShootingStar's counsel, dated the Closing Date, which opinions shall be reasonably acceptable to QED;
- (d) the Tower Lease, substantially in the form of Exhibit D hereto;



(e) resolutions of the board of directors of ShootingStar, authorizing the execution, delivery and performance of this Agreement, certified by the secretary of ShootingStar;

(f) the Note;

(g) the Security Agreement;

(h) if ShootingStar has elected pursuant to Section 7.8 to lease office and studio space and equipment pursuant to the Space and Equipment Lease, the Space and Equipment Lease;

(i) joint instructions to the Escrow Agent; and

(i) such other documents as may reasonably be requested by QED's counsel.

**12.2. Documents to be Delivered by QED.** At the Closing, QED shall deliver to ShootingStar the following:

(a) a certificate of an officer of QED, dated the Closing Date, in form and substance reasonably satisfactory to ShootingStar, certifying to the fulfillment of the conditions specified in Article 11 hereof;

(b) opinions of QED's corporate and FCC counsel, dated the Closing Date, which opinions shall be reasonably acceptable to ShootingStar;

(c) instruments of conveyance and transfer, in form and substance reasonably satisfactory to counsel to ShootingStar, effecting the sale, transfer, assignment and conveyance of the WQEX Assets to ShootingStar, including, but not limited to, the following:

(i) assignments of the WQEX Station Licenses; and

(ii) bills of sale for the WQEX Assets;

(d) the Tower Lease, substantially in the form of Exhibit D hereto;

(e) resolutions of the board of directors of QED, authorizing the execution, delivery and performance of this Agreement, certified by the secretary of QED;

(f) termination statements or other appropriate documents evidencing the release or termination of any financing statement or any lien on any of the WQEX Assets;

(g) the Security Agreement;

(h) if ShootingStar has elected pursuant to Section 7.8 to lease office and studio space and equipment pursuant to the Space and Equipment Lease, the Space and Equipment Lease;

(i) joint instructions to the Escrow Agent; and

(j) such other documents as may reasonably be requested by ShootingStar.

### **ARTICLE 13**

#### **BROKER'S COMMISSION OR FINDER'S FEE**

The parties hereto represent and warrant to each other that neither of them, nor any person or entity acting on their behalf, has agreed to pay a commission, finder's fee or similar payment in connection with this Agreement or any matter related hereto to any person or entity. The parties hereto further agree to indemnify and hold each other harmless from and against any and all claims, losses, liabilities and expenses (including reasonable attorneys' fees) arising out of a claim by any person or entity based on any such arrangement or agreement made or alleged to have been made by either QED or ShootingStar.

### **ARTICLE 14**

#### **TERMINATION RIGHTS**

**14.1. Termination.** This Agreement may be terminated at any time prior to the Closing:

(a) at any time, by mutual written agreement of QED and ShootingStar;

(b) by ShootingStar pursuant to its right to terminate as set forth in Article 17 hereof;

(c) by ShootingStar if ShootingStar elects to invoke the condition set forth in Section 11.5 hereof or the condition set forth in Section 11.6 hereof;

(d) by one party, so long as such party is not in material breach or default of this Agreement, if the other party is in material breach or default of this Agreement and such breach or default has neither been waived by the party terminating this Agreement nor cured by the defaulting party within ten (10) days following the defaulting party's receipt of written notice by the terminating party of the breach or default;

(e) by either party if both parties are in material breach or default of this Agreement and each such breach or default has neither been waived by the other party nor cured by the defaulting party within ten (10) days following the defaulting party's receipt of written notice by the other party of such breach or default;

(f) by either party, so long as such party is not in material breach or default of this Agreement, if the Closing has not occurred by December 31, 2001;

(g) by one party if the other party makes a general assignment for the benefit of creditors or files or has filed against it insolvency proceedings of any character, including bankruptcy, receivership, reorganization, composition or arrangement with creditors;

(h) by either party if any of the required consents described in Article 4 hereof are not obtained, except if such terminating party's action or inaction has improperly precluded or impeded obtaining such consent; and

(i) by either party if there shall be in effect any judgment, final decree or order that would prevent or make unlawful the Closing, or if the FCC denies the Dereservation Petition or the FCC Assignment Application or designates either of them for a trial-type hearing.

**14.2 Effect of Termination.** If this Agreement is terminated as provided in Section 14.1, then this Agreement will forthwith become void and there will be no liability on the part of any party to any other party or any other person in respect thereof except as provided in the Escrow Agreement; provided that:

(a) the obligations of the parties described in Section 7.5, Articles 15 and 18 will survive any such termination;

(b) no such termination will relieve any party from liability for any misrepresentation or breach of any representation, warranty, covenant or agreement set forth in this Agreement prior to such termination;

(c) in the event QED properly terminates this Agreement solely pursuant to Section 14.1(d) and ShootingStar has no proper basis for termination under Section 14.1, then QED shall be entitled to a total amount of two million dollars (\$2,000,000) (including the Escrow Amount) in monetary damages from ShootingStar, which two million dollars (\$2,000,000) shall constitute liquidated damages and shall constitute QED's sole and exclusive remedy; and

(d) in the event ShootingStar would be entitled to terminate this Agreement pursuant to Section 14.1(d), then ShootingStar shall be entitled to seek against QED specific performance of the terms of this Agreement, which shall be ShootingStar's sole and exclusive remedy. In any action by ShootingStar against QED to specifically enforce the terms of this Agreement, QED shall waive the defense that there is an adequate remedy at law or equity and shall agree that ShootingStar have the right to obtain specific performance of the terms of this Agreement without being required to prove actual damages, post bond or furnish other security.

**14.3. Unwind.** If, after the Closing, the FCC Consent is vacated or reversed, then the sale of the WQEX Assets to ShootingStar will be unwound (the "Unwind") as provided below so as to restore the parties as nearly as practicable to their relative positions prior to Closing.

(a) On the effective date of the Unwind (the "Unwind Date"), ShootingStar will assign, transfer and convey the WQEX Assets, any replacements thereof (the "Replacement Assets") and any additions thereto (the "Additional Assets") and the WQEX digital transmission assets integral to the operation of WQEX-DT (the "WQEX-DT Assets") then owned by ShootingStar to QED in "as is, where is" condition, free and clear of all debts, liens, security interests, pledges, mortgages, trusts, claims, liabilities and encumbrances of any nature whatsoever. Such transfer shall be made pursuant to mutually satisfactory instruments of conveyance and transfer.

(b) All leases with ShootingStar or its assignee will be cancelled as of the Unwind Date and ShootingStar will have no further liability thereunder other than (i) as provided in Sections 14, 15 and 19 of the Tower Lease and (ii) for the payment of rent or other charges under such leases accrued through the Unwind Date.

(c) The parties will cooperate with each other and use reasonable efforts to obtain as promptly as practicable any governmental or third-party consents required to effect the Unwind.

(d) QED shall refund to ShootingStar the cash component of the Purchase Price (\$17,500,000) and shall pay to ShootingStar the fair market value of ShootingStar's interest in the WQEX-DT Assets, the Replacement Assets and the Additional Assets, payable by wire transfer of immediately available funds on the Unwind Date.

(e) The Note will be cancelled and returned to ShootingStar and ShootingStar will have no further liability thereunder, following payment to QED on the Unwind Date, by wire transfer of immediately available funds, of any interest accrued on the Note through the Unwind Date.

(f) Except for the Replacement Assets, the Additional Assets and the WQEX-DT Assets, any assets (including without limitation accounts receivable) acquired by ShootingStar after the Closing relating to the WQEX Assets or the operation of Channel 16 and 26 will be retained by ShootingStar.

(g) Any liabilities assumed or incurred by ShootingStar after the Closing with respect to the WQEX Assets or the operation of Channel 16 and 26 will be retained by ShootingStar.

(h) The Unwind will not relieve any party from liability for any misrepresentation or breach of any representation, warranty, covenant or agreement set forth in this Agreement prior to the Unwind Date.

## ARTICLE 15

### INDEMNIFICATION

#### 15.1. Indemnification by Misperforming or Nonperforming Party.

Notwithstanding the Closing, each party hereby agrees to indemnify, defend and hold the other harmless against and with respect to, and shall reimburse the other for:

(a) Any and all losses, liabilities or damages resulting from any untrue representation, breach of warranty, or nonfulfillment of any covenant or obligation by such misperforming or nonperforming party contained herein or in any certificate, document or instrument delivered to the other party hereunder;

(b) Any and all losses, liabilities or damages arising from or related to, the ownership, operations or use of the WQEX Assets prior to Closing, and after any Unwind, in the case of indemnification of ShootingStar by QED, and after the Closing and prior to any Unwind, in the case of indemnification of QED by ShootingStar;

(c) Any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses, including reasonable legal fees and expenses, incident to the foregoing or incurred in investigating or attempting to avoid the same or to oppose the imposition thereof, or in enforcing this indemnity; and

(d) Interest at the Prime Rate on any reimbursable expense or loss incurred by the indemnified party from the date of default until the date of reimbursement by the indemnifying party. "Prime Rate" means the rate of interest per annum publicly announced from time to time by [Mellon Bank, N.A.] as its prime rate; each change in Prime Rate shall be effective on the date such change is publicly announced as being effective.

**15.2. Limitations.** Section 15.1 hereof is subject to the following limitations:

(a) In no event shall QED or ShootingStar have any liability of any nature whatsoever for consequential, indirect, incidental or other similar damages, including but not limited to lost profits, for any breach of this Agreement or the transactions contemplated hereby.

(b) Each of the parties acknowledges and agrees that, except for claims of fraud or any claim that as a matter of law cannot be waived, its sole and exclusive remedy subsequent to the Closing with respect to any and all claims for any losses, liabilities, damages, costs or expenses ("Losses") covered by the indemnification provisions in Section 15.1 hereof, shall be pursuant to the indemnification provisions set forth in this Article. In furtherance thereof, except for claims of fraud or any claim that as a matter of law cannot be waived, each of the parties hereby waives, to the fullest extent permitted under applicable legal requirements, any and all rights, claims and causes of action it or any of its respective affiliates may have against the other party or such other party's affiliates under or based upon any legal requirement, or common law or at equity.

(c) Neither party shall be required to indemnify the other party under this Article for any breach of any representation or warranty contained in this Agreement unless written notice of a claim under this Article 15 was received by the party within the pertinent survival period specified in Article 16 of this Agreement.

### **15.3. Indemnification Procedures.**

(a) **Notice of Claim.** Any party making a claim for indemnification under Section 15.1 hereof (the "Indemnified Party") will notify the party from whom indemnification is claimed (the "Indemnifying Party") of the claim in writing promptly after receiving written notice of any action, lawsuit, proceeding, investigation or other claim against it (if by a third party) or discovering the liability, obligation or facts giving rise to such claim for indemnification. Such notice will describe the claim, the amount thereof (to the extent then known and quantifiable), and the basis therefor, in each case to the extent known to the Indemnified Party. The failure to so notify the Indemnifying Party will not relieve the Indemnifying Party of its obligations under Section 15.1 hereof, except to the extent that such failure actually prejudices the Indemnifying Party.

(b) **Assumption of Defense.** With respect to any third party claim that gives rise or is alleged to give rise to a claim for indemnity under Section 15.1 hereof and that involves only the payment of money damages to such third party and that does not concern any FCC Consent, the Indemnifying Party, at its option (subject to the limitations set forth below), will be entitled to assume responsibility for and control the defense of such claim and to appoint a competent and reputable counsel reasonably acceptable to the Indemnified Party to act as lead counsel of such defense. Prior to the Indemnifying Party assuming control of such defense, the Indemnifying Party must first furnish the Indemnified Party with evidence which, in the Indemnified Party's reasonable judgment, establishes that the Indemnifying Party is and will be able to satisfy any such liability.

(c) **Limits of Assumption of Defense.** An Indemnifying Party's rights under Section 15.3(b) will be subject to the following additional limitations:

- (i) with respect to any claim the defense of which the Indemnifying Party has assumed, the Indemnified Party will be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose, and the fees and expenses of such separate counsel will be borne by the Indemnified Party (except that the reasonable fees and expenses of such separate counsel incurred prior to the date the Indemnifying Party effectively assumes control of such defense will be borne by the Indemnifying Party);
- (ii) the Indemnifying Party will not be entitled to assume control of such defense if (A) the claim for indemnification relates to or arises in connection with any criminal proceeding, action, indictment, allegation or investigation, (B) the Indemnified Party

concludes based on the reasonable opinion of the Indemnified Party's counsel that, in light of any actual conflict of interest, it would be inappropriate for legal counsel selected by the Indemnifying Party to represent the Indemnified Party, or (C) upon petition by the Indemnified Party, an appropriate court rules that the Indemnifying Party failed or is failing to vigorously prosecute or defend such claim; and

- (iii) if the Indemnifying Party assumes control of the defense of any such claim, then the Indemnifying Party will obtain the prior written consent of the Indemnified Party before entering into any settlement of such claim, if such settlement does not expressly and unconditionally release the Indemnified Party from all liabilities and obligations with respect to such claim, without prejudice.

If the Indemnifying Party has the right, but does not assume control of the defense of any claim in accordance with this Section, then the Indemnifying Party may nonetheless participate (at its own expense) in the defense of such claim and the Indemnified Party will consult with the Indemnifying Party in respect of such defense, and the Indemnified Party will not enter into any settlement of such claim that could result in indemnification liability under Section 15.1 hereof. As used in this Article, the term "settlement" refers to any settlement, compromise, consent or similar decree, or election to permit default judgment to be entered, in respect of any claim.

## ARTICLE 16

### SURVIVAL OF REPRESENTATIONS, WARRANTIES AND COVENANTS

Except as otherwise expressly set forth herein, the representations, warranties, covenants, indemnities and agreements contained in this Agreement or in any certificate, document or instrument delivered pursuant to this Agreement are and will be deemed and construed to be continuing representations, warranties, covenants, indemnities and agreements and shall survive the Closing. The representations and warranties contained herein shall survive the Closing for a period of twenty-four (24) months after the Closing Date; provided, however, that the representations and warranties in the second sentence of Section 5.5 hereof shall survive without time limit. No claim may be brought under this Agreement or any other certificate, document or instrument delivered pursuant to this Agreement unless written notice describing in reasonable detail the nature and basis of such claim is given on or prior to the last day of any applicable survival period specified herein. In the event such a notice is given, the right to indemnification with respect thereto shall survive any applicable survival period until such claim is finally resolved and any obligations thereto are fully satisfied. Any investigation by or on behalf of any party hereto shall not constitute a waiver as to enforcement of any representation, warranty, covenant or agreement contained herein.



## ARTICLE 17

### RISK OF LOSS

The risk of loss or damage to the WQEX Assets prior to the Closing shall be upon QED. QED shall repair, replace and restore any damaged or lost WQEX Asset to its condition on the date of this Agreement as soon as possible and in no event later than the Closing Date, provided, however, that QED shall have no obligation to repair, replace or restore a damaged or lost WQEX Asset that is obsolete if no replacement asset is necessary or useful for the continued operation of WQEX consistent with past practice. If QED is unable or fails to restore or replace a lost or damaged WQEX Asset prior to the Closing and the cost of such restoration or replacement would exceed one hundred thousand dollars (\$100,000) individually or in the aggregate, ShootingStar may elect (a) to consummate the transactions contemplated by this Agreement on the Closing Date, in which event QED shall assign to ShootingStar all proceeds of insurance covering such WQEX Asset's damage, destruction or loss, or (b) to delay the Closing until a date within fifteen (15) days after QED gives written notice to ShootingStar of the completion of the restoration or replacement of such WQEX Asset, or (c) to terminate this Agreement and the transactions contemplated hereby with no further liability hereunder. If QED is unable or fails to restore or replace any lost or damaged WQEX Asset prior to the Closing Date and the cost of such restoration or replacement would be one hundred thousand dollars (\$100,000) or less, QED shall reimburse ShootingStar for the cost of restoration or replacement of such asset. If the delay in the Closing under this Article would cause the Closing to fall at any time after the period permitted by the FCC Consent, the parties shall file an appropriate request with the FCC for an extension of time within which to complete the Closing.

## ARTICLE 18.

### OTHER PROVISIONS

**18.1. Benefit and Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other party hereto; provided, however, that ShootingStar may assign its rights and obligations hereunder to an affiliate provided such affiliate is controlled by Diane Sutter and her equity partners and ShootingStar first obtains the consent of QED, which consent QED shall not unreasonably withhold.

**18.2. Entire Agreement.** This Agreement and the exhibits and schedules hereto embody the entire agreement and understanding of the parties hereto and supersede any and all prior agreements, arrangements and understandings relating to the matters provided for herein. No amendment, waiver of compliance with any provision or condition hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed

by the party against whom enforcement of any waiver, amendment, change, extension or discharge is sought.

**18.3. Headings.** The headings set forth in this Agreement are for convenience only and will not control or affect the meaning or construction of the provisions of this Agreement.

**18.4. Computation of Time.** If after making computations of time provided for in this Agreement, a time for action or notice falls on Saturday, Sunday or a Federal holiday, then such time shall be extended to the next business day.

**18.5. Governing Law.** The construction and performance of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania without regard to its principles of conflict of law. In the event of any dispute involving this Agreement or any other instrument executed in connection herewith, the parties irrevocably agree that venue for such dispute shall lie in any court of competent jurisdiction in the Commonwealth of Pennsylvania.

**18.6. No Third Party Beneficiaries.** No person who is not a party to this Agreement shall be deemed to be a beneficiary of any provision of this Agreement, and no such person shall have any claim, cause of action, right or remedy pursuant to this Agreement.

**18.7. Notices.** Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing, addressed to the following addresses, or to such other address as any party may request in writing.

If to QED:

George L. Miles, Jr.  
Chief Executive Officer  
WQED Pittsburgh  
4802 Fifth Avenue  
Pittsburgh, PA 15213

With a copy, which shall not constitute notice, to:

Leventhal, Senter & Lerman P.L.L.C.  
2000 K Street, N.W., Suite 600  
Washington, D.C. 20006  
Attention: Steven A. Lerman, Esq.

If to ShootingStar:

ShootingStar, Inc.  
3606 Camino de la Cumbre  
Sherman Oaks, CA 91423  
Attention: Diane Sutter, President and CEO

With a copy, which shall not constitute notice, to:

DeForest & Koscelnik  
3000 Koppers Building  
436 Seventh Avenue  
Pittsburgh, PA 15219  
Attention: Walter P. DeForest, Esq.

Any such notice, demand or request shall be deemed to have been duly delivered and received (i) on the date of personal delivery, or (ii) on the date of receipt, if mailed by registered or certified mail, postage prepaid and return receipt requested, or (iii) on the date of a signed receipt, if sent by an overnight delivery service, but only if sent in the same manner to all persons entitled to receive notice or a copy.

**18.8. Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

**18.9. Further Assurances.** Each party shall at any time execute and deliver to the other such further conveyances, assignments and other written assurances as the other may reasonably request to effect the purposes of this Agreement.

**18.10. Cost and Expenses.** Each party shall bear its own costs and expenses (including, without limitation, attorneys' fees) incurred in connection with this Agreement, the documents contemplated hereby and the transactions contemplated herein and therein, except as specifically set forth in Sections 4.3 and 9.2 hereof.

## ARTICLE 19

### DEFINITIONS

Each of the following terms shall have the meaning assigned to it in the provision of this Agreement set forth next to that term:

Additional Assets	Section 14.3(a)
Agreement	Preamble
Channel 16	First Recital
Channel 26	First Recital
Closing	Section 1.1
Closing Date	Section 1.1
Communications Laws	Section 5.3(b)
Dereservation Petition	Section 4.1
Escrow Agent	Section 2.2
Escrow Agreement	Section 2.2
Escrow Amount	Section 2.2
FCC	First Recital
FCC Assignment Application	Section 4.1
FCC Consent	Section 4.1
Final Order	Section 11.2
HSR Act	Section 4.3
Indemnified Party	Section 15.3(a)
Indemnifying Party	Section 15.3(a)
Losses	Section 15.2(b)
Non-FCC Licenses	Section 5.10
Note	Section 2.1
Prime Rate	Section 15.1(d)
Purchase Price	Section 2.1
QED	Preamble
Replacement Assets	Section 14.3(a)
Security Agreement	Section 2.1
ShootingStar	Preamble
Space and Equipment Lease	Section 7.8
Tower Lease	Section 7.1
Unwind	Section 14.3
Unwind Date	Section 14.3(a)
WQEX	First Recital
WQEX Assets	Section 1.2
WQEX-DT Assets	Section 14.3(a)
WQEX Station Licenses	Section 1.2(a)
WQEX Transmission Assets	Section 5.5

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first written above.

ATTEST

By: 

Name: ROBERT F. PETRILLI

Title: VICE PRESIDENT & CAO

ATTEST

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

WOED PITTSBURGH

By: 

Name: GEORGE L. MYLES, JR.

Title: PRESIDENT & CEO

SHOOTINGSTAR, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first written above.

ATTEST

WOED PITTSBURGH

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST

SHOOTINGSTAR, INC.

By: Walter P. DeForest

By: Diane Suter

Name: Walter De Forest

Name: DIANE SUTER

Title: Counsel

Title: PRESIDENT / CEO

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of January 2002, copies of the foregoing **REPLY  
COMMENTS OF CITIZENS FOR INDEPENDENT PUBLIC BROADCASTING AND  
ALLIANCE FOR PROGRESSIVE ACTION**; MM Docket No. 01-276, were sent via  
messenger to the following:

Magalie Roman Salas (**Original + 4 Copies**)  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, N.W.  
TW-A325  
Washington, DC 20554

Steven A. Lerman, Esq.  
Barbara K. Gardner, Esq.  
Peter M. Gould, Esq.  
Leventhal, Senter & Lerman PLLC  
2000 K Street, N.W.  
Suite 600  
Washington, DC 20006  
(Counsel for WQED Pittsburgh)

Sally A. Buckman, Esq.  
Leventhal, Senter & Lerman PLLC  
2000 K Street, N.W.  
Suite 600  
Washington, DC 20006  
(Counsel for ShootingStar, Inc.)

Qualex International  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room CY-B402  
Washington, DC 20554

  
\_\_\_\_\_  
Sonja L. Sykes-Minor